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Supreme Court, U.S.
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No. 02-1804, 03-198

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT E. MEADE,

Petitioner,

v.

PATRICIA A. MILLER, SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF HELEN V. MEADE
and

DECISIONS OF THE ORPHANS' COURT FOR ANNE ARUNDEL COUNTY, et al.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR REHEARING

ROBERT E. MEADE
P.O. Box 2260
Landover Hills, Maryland 20784
(202) 468-1823

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QUESTIONS PRESENTED IN PETITION FOR REHEARING

Whether the state courts, as the federal courts, should protect the rights of litigants secured by the Constitution of the United States?

Whether the Supreme Court's denials of the Petitions for Writ of Certiorari should be reheard in view that there are other Petitions for Writ of Certiorari with similar issues before the Supreme Court?

Whether the Court of Appeals of Maryland erred in not granting the Petitions for Writ of Certiorari where the Petitioner clearly presented an issue of public interest?

QUESTIONS PREVIOUSLY PRESENTED IN PETITION FOR WRIT OF CERTIORARI- NO. 02-1804

Whether both the Circuit Court and the Orphans' Court of Maryland for Anne Arundel County abused their discretion in denying the Petitioner his procedural due process rights?

Whether the Court of Special Appeals of Maryland erred in determining, as did the Circuit Court of Maryland for Anne Arundel County, that the decisions, judgments, and orders issued by the Orphans' Court of Maryland for Anne Arundel County were not final and were not appealable?

Whether the Court of Special Appeals of Maryland erred in remanding a case back to the trial court where the Petitioner could not receive a fair and impartial trial?

QUESTIONS PREVIOUSLY PRESENTED IN PETITION FOR WRIT OF CERTIORARI- NO. 03-198

Whether the lack of jurisdiction by orphans' courts makes the judgments issued by these courts totally void?

Whether the Court of Appeals of Maryland erred in not recognizing that the Orphans' Court of Maryland for Anne Arundel County has failed to abide by testamentary law?

Whether the Court of Appeals of Maryland abused its discretion in not granting a Petition for a Writ of Certiorari where the Petitioner clearly presented an issue of public interest just by the fact that the Orphans' Court for Anne Arundel County ordered excessive attorneys' fees and then ordered a higher percentage fee of ninety per cent (90%) to be paid by the Petitioner?

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PETITION FOR REHEARING

The Petitioner moves this Honorable Court, pursuant to Supreme Court Rule 44.2, to rehear the Petitioner's Petitions for Writ of Certiorari No. 02-1804 and No. 03-198 which were consolidated for the purpose of rehearing since both Petitions were denied by the Supreme Court on October 6, 2003. The consolidation of these two Petitions was necessary for simplicity of filing and for efficiency of cost to the Petitioner. The following substantial grounds for rehearing are respectfully presented by the Petitioner.

The main aspect of testamentary law is the intent of the testator. "The intention of the testatrix as expressed in the will is a problem of construction, over which the orphans' court has no jurisdiction. It is a matter of interpretation, a question of law which can only be determined by a court of equity". McLaughlin v. McLaughlin, 186 Md. 165, 46 A. 2d 307 In the last will and testament of Helen V. Meade, she specifically listed her estate and she specifically left the estate to be equally divided between her two sons. However, upon the resignation of the Personal Representative named in the last will and testament, Juanita Hundley, the Orphans' Court for Anne Arundel County took it upon itself to decide how the estate was to be divided rather than to abide by the last will and testament as it was written.

The Orphans' Court of Maryland for Anne Arundel County, so as to ascertain that the estate would be administered as the Orphans' Court for Anne Arundel County wanted, appointed Patricia A. Miller, Esquire, as Successor Personal Representative, without even holding a hearing and without allowing any of the relatives of the decedent to apply for the testamentary letters or allowing the Petitioner to participate in choosing a Successor Personal Representative. Instead, the Orphans' Court for Anne Arundel County chose Patricia A. Miller, Esquire, who did not know the decedent nor the Petitioner. However, the Orphans' Court for Anne Arundel County knew Patricia A. Miller, Esquire, since she was often called to be a mediator

in the Orphans' Court and the Circuit Court for Anne Arundel County. The Petitioner appealed the appointment of Patricia A. Miller, Esquire. Patricia A. Miller, Esquire, acted contrary to what was written in the last will and testament, and began to rewrite the wishes and desires of the decedent by beginning to administer her version of the last will and testament with the intent to receive the bulk of the estate by charging excessive attorney fees for herself and her attorney and through unscrupulous and fraudulent means. Since "The right of administration is one not resting in the discretion of the orphans' court, but is founded on positive law". Nusz v. Grove, 27 Md. 401

After appointing Patricia A. Miller, Esquire, as the Successor Personal Representative, the Orphans' Court for Anne Arundel County allowed the Successor Personal Representative to obtain the services of an attorney, Walter S. B. Childs, who the Orphans' Court for Anne Arundel County had appointed as Successor Personal Representative in various other cases. With his close relationship with the Orphans' Court for Anne Arundel County and the Circuit Court for Anne Arundel County, Walter S. B. Childs, Esquire, participated in many ex parte communications with the Court, not abiding by Maryland Rule 1-351, which states the obligations of lawyers not to have ex parte communications with the Courts. "Fairness of the adversary system requires that judges not be approached or requested to take action in a unilateral or ex parte fashion. The prohibition against ex parte communications with the court applies to any issue in any location, whether in court, in a social context, or otherwise". Also, the opposing attorneys, Patricia A. Miller, Esquire, and Walter S. B. Childs, Esquire, did not comply with the Maryland Rules of Professional Conduct, Rule 3.5 (a) (7) "A lawyer shall not communicate ex parte about an adversary proceeding with the Judge or other official or for which the proceeding is pending, except as permitted by law". It is well recognized by the legal system that "Fair play is the essence of "due process" and "All people must stand on an equality before the bar of

justice in every American court. U.S.C.A. Const Amend 14". Califano v. Yamasaki, 442 U.S. 682 (1979)

The intent of these ex parte communications with the Orphans' Court and the Circuit Court for Anne Arundel County was to deny the Petitioner fair and just hearings in his mother's estate case so that the Successor Personal Representative, Patricia A. Miller, Esquire, and her attorney, Walter S. B. Childs, Esquire, could easily continue to defraud the estate for their own enrichment. The Supreme Court of the United States has been asked to review these ex parte communications, which are not permitted by law, in various petitions presented such as the Petition, In re Anonymous, Ind. No. 20500-0205-DI-271,4/25/03 where the Petitioner requests a review of "The lawyer's failure to comply with this requirement meant that her communications with the judge were not "permitted by law" under the disciplinary rule that forbids ex parte contacts with judges, the court decided in a per curiam opinion".

"Denial of due process is failure to observe that fundamental fairness essential to the very concept of justice". Linden v. Dickson, C.A. Cal. 1961, 287 F. 2d 55 Trial judge must remain a disinterested and objective participant. Throughout the legal process in this estate case, the Petitioner has been denied the right to fair impartial hearings. Even though the Petitioner appealed the appointment of Patricia A. Miller, Esquire, as the Successor Personal Representative, the Orphans' Court for Anne Arundel County allowed her to continue to act in that capacity even though the Orphans' Court for Anne Arundel County was aware that Patricia A. Miller, Esquire, and her attorney, Walter S. B. Childs, were defrauding the estate. Although the Petitioner presented evidence and/or proof of such that Patricia A. Miller, Esquire, and Walter S. B. Childs, Esquire, were defrauding the estate, the Orphans' Court for Anne Arundel County did not remove them. The Orphans' Court for Anne Arundel County failed to abide by Annotated Code of Maryland., Estates and Trusts § 6-306, which obligates the Orphans' Court to remove a Personal Representative for

a serious cause, an allegation of fraud. By ignoring the allegations of fraud against the Successor Personal Representative whom the Orphans' Court for Anne Arundel County had appointed, the Orphans' Court for Anne Arundel County performed an injustice and thus took part in the defrauding of the estate.

The Orphans' Court for Anne Arundel County, fully aware that Patricia A. Miller, Esquire, and Walter S. B. Childs, Esquire, were defrauding the estate and that Thomas J. Aversa, Jr. had defrauded the estate further enriched the attorneys in the estate with outrageous excessive attorney fees. The attorney for the first Personal Representative, Thomas J. Aversa, Jr., Esquire, was paid fees in the sum of $10,400.00 and the attorney for the Successor Personal Representative, Walter S. B. Childs, Esquire, was paid a first interim of attorney fees in the sum of $42,411.78. The Orphans' Court further ordered that 90% of both these attorney fees be assessed to the Petitioner's share of the estate, just because the Petitioner opposed both attorneys in their handling of the estate. "In determining whether a judgment was rendered under a system that comports with due process, court must satisfy itself of the essential fairness of the judicial system under which judgment was rendered". Handel v. Artukovic, D.C. Cal. 1985, 601 F. Supp 1421

A review of the awarding of attorney fees is a subject matter which is often placed on the docket of the Supreme Court of the United States. One of the many petitions before the Highest Court is Petition No. 02-1561 Bowles v. Harris County, Texas, 4/22/03, where one of the Questions presented is "(1) Does trial court have discretion to award attorney's fees to defendants pursuant to 42 U.S.C. § 1988 in flagrant denial of plaintiff's citizen's right to due process of law and equal protection of laws under 14th Amendment?" Another petition, Petition No. 02-1038 Bono v. Parkinson filed January 3, 2003- Questions presented are "(1) Should petition be granted to address whether litigant's due process right to hearing before impartial tribunal is violated when judge exhibits clear bias against litigant appearing before

judge and joins forces with parties that are opposing litigant in case before judge? (2) Should petition be granted to consider whether Judge Seybolt's repeated rules violation deprived petitioner of his due process rights and whether cumulative effect of repeated rule violation also deprived petitioner of his due process rights?"

The Supreme Court of the United States should afford the Petitioner and these Petitioners an opportunity to address these important issues which should be reviewed since it is the very essence of a fair judicial system. "Thus we hold that a state may not, consistent with the obligations imposed on it by the Due Process Clause of the 14th Amendment, pre-empt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so". Boddie v. Connecticut, 401 U.S. 371

The Orphans' Court for Anne Arundel County has proceeded in a manner unlike any other probate court. The Supreme Court should review the Petitioner's case in light of the structural and the procedural errors of the Orphans' Court and the Circuit Court for Anne Arundel County. At the motion hearing, the Orphans' Court for Anne Arundel County gave the two attorneys, Thomas J. Aversa, Jr. and Joel L. Katz, the opportunity to lodge false accusations against the Petitioner, but the Petitioner was not allowed to voice his objections. The Orphans' Court also ordered the sale of the real property even though the Personal Representative and the Successor Personal Representative did not present proof of the existence of unpaid debts, which rendered the sale necessary.

The Orphans' Court for Anne Arundel County continued with its prominent prejudice against the Petitioner by imposing liens against him for sanctions awarded to another attorney, Joel L. Katz, in the sum of $13,992.00 which were unfairly imposed upon the Petitioner, and other fees of $500.00 and $288.46 for the other heir for just being present at the hearings. The Orphans' Court for Anne Arundel County failed to afford the Petitioner the right to be heard before issuing these Orders. The Orphans' Court for Anne

Arundel County ignored the Rules of Procedure. "Procedural due process rules are meant to protect persons not from deprivation, but from mistaken or unjustified deprivation of life, liberty, or property U.S.C A. Const Amend 14" . Carey v. Piphus, 98 S Ct. 1042, 435 U.S. 247, 55 L. Ed 2d 252 "In addition to dismissing some of our precedents, the Court ignores the commands of the Federal Rules of Civil Procedure, which support the conclusion that a court should rely on rules, and not inherent powers, whenever possible". Chambers v. NASCO, Inc., 111 S Ct. 2123, 501 U.S. 32, 115 L. Ed 2d 27, rehearing denied, 112 S Ct. 12, 501 U.S. 1269, 115 L Ed 2d 1097

The Petitioner wanted to stop the Orphans' Court and the Circuit Court for Anne Arundel County from denying him his right to he heard and thus motioned the Courts to remove his case guaranteed by the Maryland Constitution, Article IV § 8 so as to guarantee impartial administration of justice. The Courts denied both Motions for Removal and the Petitioner appealed. The Petitioner prays that even though the Court of Appeals of Maryland failed to make a determination, the Supreme Court of the United States will be able to determine as the Court determined in Griffin v. Leslie, 20 Md. 15,

> "The appellant having filed his suggestion in the manner and form prescribed by the Constitution and Acts of Assembly, the court below erred in refusing to order the removal, and the subsequent proceedings were "coram non judice" "That the provisions of Art 10 of the Constitution upon the filing of the appellant's suggestion for removal, the court below was deprived of all jurisdiction over the suit, except the power to designate to which adjoining county it should be removed; and that the judgment subsequently rendered by the court, being without lawful authority must be reversed".

The Supreme Court has the following petitions pending where the Petitioners raise similar questions:

Petition No. 03-245 DeRolph v. State, ex rel. Ohio filed August 13, 2003- Question presented: "Have petitioners been deprived of their right, under US Constitution, to due process and equal protection of law by decision of the Supreme Court of Ohio barring them from access to Ohio's courts for enforcement of final judgment, including remedial orders, entitling petitioners to affirmative relief?"

Petition No. 02-1653 Amolik v. Philippines Airlines, Inc. filed May 9, 2003- Questions presented: "(1) Did appellate court so far depart from accepted and usual course of judicial proceedings, or sanction such departure from trial court in this case, thereby warranting exercise of this court's supervisory power to correct significant and harmful procedural errors made by trial and appellate courts, when the appellate court failed to state what standards were used to affirm trial court's award of sanctions, and trial court failed to state how it applied rules stated in order granting sanctions? (4) Were petitioners denied due process because district court failed to hold separate hearing on defendants' motion for sanctions?"

Petition No. 03-307 Long v. Cross Reporting Service, Inc. filed August 25, 2003- Question presented: "Does Constitution allow state court to deny access to courts to enforce legal and constitutional rights against state judges?"

The Supreme Court of the United States should come to the same conclusion as the Court in Horn v. O'Cheskey, D.C. N. M. 1974, 378 F. Supp 1280 "State courts bear equal responsibility with federal courts to guard and protect rights secured by Constitution of the United States".

CONCLUSION

For all the aforementioned reasons given in this Petition For Rehearing and for all those reasons previously set forth within the two Petitions for Writ of Certiorari, which were consolidated in this Petition for Rehearing, the Petitioner

respectfully requests and prays that the Supreme Court of the United States will review, will reconsider, will rehear, and then, grant this Petition for Rehearing and reverse its denial of the Petition for Writ of Certiorari and issue a Writ of Certiorari.

Respectfully submitted,

Robert E. Meade
P. O. Box 2260
Landover Hills, Maryland 20784
(202) 468-1823

CERTIFICATE OF GOOD FAITH

Pursuant to the Supreme Court Rule 44.2, the Petitioner hereby certifies that the foregoing Petition for Rehearing is presented in good faith and not for delay.

_____

Robert E. Meade